IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3148 OF 2005

IN

SUMMARY SUIT NO.897 OF 1994

Brahma Consultants & Supplies P.Ltd. ...Plaintiff.

vs.

M/s.Bhasin Associates P.Ltd. ...Defendant.

Mr.D.D.Madan i/b. De Jure, for Plaintiff.

Mr.Prashant P.Kulkarni, for Defendant in support.

CORAM: D.K.DESHMUKH,J.

DATED: 8th June,2007.

P.C.:-

1. This is a notice of motion taken out by the defendant for setting aside the decree dated 21.9.2005 passed by this court in Summary suit no.897 of 1994. Admitted position is that the plaintiff has filed a summary suit for money decree against the defendant. The

defendant is a company incorporated under the Companies Act. The defendant was represented by a lawyer. The Summons for judgment was served on the defendant through the lawyer. No application for leave to defend was filed. When the summons for judgment appeared before the Court for hearing the Advocate appearing for defendant stated to the Court that she has no instruction in the matter. Therefore, in the absence of any application for leave to defend, the Court granted summons for judgment and decreed the suit. The present notice of motion has been taken out for setting aside that decree.

2. The affidavit in support of the notice of motion which is taken out by the defendant company, is filed by one Mr.Narinderjit Singh. He states that he is authorised signatory of the defendant. In paragraph 6 of the said affidavit he states thus:-

> " I say that the earlier Advocates on record had time and again forwarded letters to me; however I was unable to attend to the same as I was constantly touring. I further say that I was made aware vide the letter of my earlier Advocates that they have withdrawn their appearance for want of instructions and that an ex-parte decree has been passed in my absence."

The above quoted paragraph from the affidavit filed in support of the

notice of motion shows that the lawyer appearing for defendant was constantly sending letters but no instructions were given by the defendant and the reason for that is Mr.Narinderjit Singh was touring. In paragraph 8 of the affidavit filed in support of the notice of motion it is stated thus:-

> " In the circumstances stated hereinabove I say and submit that due to no fault of the Defendants a decree dated 21.09.2005 has come to be passed against the Defendants. I say that I am the authorized signatory on behalf of the Defendants in Mumbai and that constantly being on business tours I was unable to attend to the captioned matter. In the circumstances I say and submit that the ex-parte decree is liable to be and ought to be set aside or grave irreparable, harm loss and injury will be caused to the Defendants with no fault of theirs."

This paragraph gives the impression that Mr.Narinderjit Singh was the only power of attorney holder who could have filed reply or application for leave to defend in the summons for judgment and as he was constantly touring he could not do it. Firstly, there is no document produced on record to show that Mr.Narinderjit Singh was the only person who was authorised to file affidavit on behalf of the defendant Company. There is also no document produced to show that Mr.Narinderjit Singh was on tour during the relevant period. By the affidavit, an attempt is made to create an impression that Mr.Narinderjit Singh was the only person who was authorised to file

affidavit on behalf of the defendant Company and as he was touring, the reply could not be filed. From the rejoinder that has been filed by the plaintiff, it is clear that apart from Mr.Narinderjit Singh there was another person by name Mr.T.N.Ghosh who was also holding power of attorney at the relevant time given by the defendant company. The said Mr.T.N.Ghosh has filed an affidavit in the appeal Court when the appeal was filed against the order passed in this very suit. The affidavit filed by Mr.T.N.Ghosh shows two things; (i) that Mr.Narinderjit Singh was not the only person dealing with the case and (ii) that he was also not the only person holding power of attorney from the defendant company. Thus, the reason that has been given for not filing reply in the summons for judgment and not seeking leave to defend is completely unacceptable. What is significant is that the reason that has been given is a false reason. The defendant has also suppressed the fact that there was another power of attorney holder from the defendant company. It appears that in this notice of motion at the ad-interim stage the Court recorded that prima facie it appears that sufficient cause has not been made out but still as a matter of indulgence the Court granted ad-interim order in terms of prayer clause (b) subject to the condition that the defendant furnishes security. Against this order an appeal was filed. In the appeal that order was got modified and the Appeal Court extended time to furnish security. But even that security was not furnished and an attempt was

made to give a corporate guarantee. When the Prothonotary declined to accept that guarantee a chamber summons was taken out. Thus, though there is a decree in favour of the plaintiff and though the condition subject to which the execution of that decree was stayed, was never complied with by the defendant, the defendant prevented the plaintiff from executing that decree till now. In my opinion, this is a clear case of abuse of process of the Court by the defendant by adopting multifarious proceedings. In my opinion, therefore, merely dismissing this notice of motion will not serve the interest of justice but exemplary cost should be imposed on the defendant for abusing the process of the Court by filing false affidavit, by suppressing the material facts from the Court and by filing multifarious proceedings. The notice of motion is disposed of. The defendant is directed to pay as and by way of cost of this notice of motion Rs.15,000/- to the plaintiff. The cost if not paid shall be recoverable at the time of execution of the decree.